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BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

AZ CORPORATION Commission
DOCUMENT DOCKETED

MAY 22 2001

DOCKETED BY	<i>NA</i>
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IN THE MATTER OF THE)
APPLICATIONS OF H2O, INC. AND)
JOHNSON UTILITIES COMPANY FOR)
AN EXTENSION OF THEIR)
CERTIFICATES OF CONVENIENCE AND)
NECESSITY.)

DOCKET NOS. W-02234A-00-0371
WS-02987A-99-0583

IN THE MATTER OF THE APPLICATION)
OF JOHNSON UTILITIES, L.L.C., DBA)
JOHNSON UTILITIES COMPANY, FOR)
AN EXTENSION OF ITS CERTIFICATE)
OF CONVENIENCE AND NECESSITY TO)
PROVIDE WATER AND WASTEWATER)
SERVICE TO THE PUBLIC IN THE)
DESCRIBED AREA IN PINAL COUNTY,)
ARIZONA.)

DOCKET NO. WS-02987A-00-0618

IN THE MATTER OF THE APPLICATION)
OF DIVERSIFIED WATER UTILITIES,)
INC. TO EXTEND ITS CERTIFICATE OF)
CONVENIENCE AND NECESSITY.)

DOCKET NO. W-02859A-00-0774

IN THE MATTER OF THE APPLICATION)
OF QUEEN CREEK WATER COMPANY)
TO EXTEND ITS CERTIFICATE OF)
CONVENIENCE AND NECESSITY.)

DOCKET NO. W-01395A-00-0784

**DIVERSIFIED WATER UTILITIES, INC.'S REPLY
REGARDING OPPOSITION TO LATE-FILED EXHIBITS
AND MOTION TO STRIKE**

Diversified Water Utilities, Inc. ("Diversified") hereby replies to Johnson Utilities, L.L.C. dba Johnson Utilities Company; ("Johnson Utilities") Response to Diversified's Opposition to the Late-Filed Exhibits and Motion to Strike.

1 A. THERE WAS NO AGREEMENT TO ACCEPT LATE-FILED DOCUMENTS
2 MANUFACTURED AFTER THE HEARING CLOSED.

3 Johnson Utilities' sole justification for filing the improper and prejudicial
4 documents that were created subsequent to the close of hearing is a supposed "agreement with
5 Staff at the hearing ... with the approval of the Administrative Law Judge." Response at p. 2, ll.
6 5-7. No reference to the transcript was provided to support this assertion. When contacted
7 regarding the purported "agreement," Commission Staff could not recall, one way or the other,
8 whether it had agreed to the late filing of the documents presented by Johnson Utilities.
9 Therefore we checked the transcript.

10 At the close of hearing the following discussion took place between counsel and
11 ALJ Stern:

12 "ALJ STERN: ... That concludes this proceeding. I'll take the matter
13 under advisement. S-3 is going to be filed probably this week or
14 beginning of next week?

15 MS. WOLFE: By Tuesday?

16 ALJ STERN: That would be fine. And then the document relating to
17 legal descriptions of the various parcels. And I thing that's about it.
Anything else?

18 MR. SHAPIRO: No, Your Honor. Thank you.

19 *MR. CAMPBELL: No.*

20 ALJ STERN: Thank you . That concludes this hearing."

21 (Emphasis added) Transcript, Vol. V (3/21/2001) at p. 935, ll. 12-24; copy attached hereto as
22 Exhibit A.

23 ALJ Stern indicated at the close of hearing what was to be provided as late-filed
24 exhibits (the parcel list and S-3). The documents recently submitted by Johnson Utilities were not
25 listed; nor did Johnson Utilities' counsel correct the ALJ when provided the opportunity. This
26

1 discussion is conclusive. The documents belatedly created and recently submitted by Johnson
2 Utilities are improper and must be stricken.

3 While the foregoing directive of ALJ Stern is determinative of the issue before the
4 Commission, we did not limit our review of the transcript to this final direction and we did
5 discover a brief exchange between Mr. Denby and Ms. Wolf following the questioning Mr.
6 Handy where Johnson Utilities represented that service requests already existed and offered to
7 provide them to Commission Staff. In particular, Mr. Denby represented: "we have [present
8 tense] a stack of formal requests that Johnson has been asked to serve" and offered to provide
9 them to Commission Staff. Transcript, Vol. II (3/16/2001) p. 393, ll. 11-13, a copy of which is
10 attached as Exhibit B. Ms. Wolfe indicated: We [Commission Staff] would like to see that filed
11 as a late-filed exhibit or later on in the proceeding, yes." (Emphasis added) Id. at ll. 18-20. It
12 must be emphasized that the documents were represented as documents that already existed as of
13 March 16, 2001 and, more importantly, ALJ Stern neither requested the late-filed exhibits nor
14 authorized their filing. Furthermore, the hearing continued through March 21, 2001, providing
15 ample opportunity to submit the documents during the hearing. The fact is, contrary to the
16 representation of Mr. Denby, these documents did not exist as of March 16, 2001. Rather they
17 were created after the hearing closed as reflected by their dates (March 27, 2001, March 28,
18 2001, and April 19, 2001). These documents were all manufactured after the hearing was closed
19 on March 21, 2001, were not subject to cross-examination and are prejudicial and improper.
20 They must be stricken from the record.

21 B. DIVERSIFIED'S PARCEL LIST SHOULD BE UTILIZED.

22 Johnson Utilities has indicated that the list of parcels submitted by Diversified is
23 acceptable and no other party has objected to it. Therefore, the Commission should use the
24 parcel list supplied by Diversified, as corrected.
25
26

1 C. STAFF CLEARLY RECOMMENDS THE AREA CONTIGUOUS AND TO THE
2 SOUTH OF DIVERSIFIED BE GRANTED TO DIVERSIFIED.

3 Finally, Johnson Utilities claims it is "unclear" whether Staff recommended that
4 Diversified's CC&N be expanded to include all of Sections 14 and 16, T3S, R8E, Pinal County,
5 (including the East half of Section 14 and that portion of Section 16 lying South and West of the
6 Southern Pacific Railroad right-of-way, which Johnson Utilities has unilaterally denominated as
7 Parcels 25 and 26). We attach hereto as Exhibit C Staff's depiction of the area it is
8 recommending be granted to Diversified. It is evident that there are no partial sections involved.
9 It should be remembered that George Johnson testified that areas that are currently owned by the
10 State of Arizona in this vicinity can be expected to be developed in the near future. It is
11 appropriate to grant the entire section now to ensure orderly development in the future. Certainly
12 it is reasonable to anticipate that these areas will develop in conjunction with the Bella Vista
13 Farms development.

14 Respectfully submitted this 22nd day of May, 2001.

15
16 MARTINEZ & CURTIS, P.C.

17
18 

19 William P. Sullivan, Esq.
20 2712 North Seventh Street
21 Phoenix, Arizona 85006-1090
22
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EXHIBIT A

1 Staff maintains the position that it has held
2 since it first became aware of the movement to form a
3 district. And that is that until a utility's assets
4 are obtained, the existence of a district should have
5 no bearing on a Commission decision in this matter.
6 Again, I reiterate that the timing of any district
7 acquisition of utility assets is not known. And
8 because it may not occur, the Commission should
9 proceed as if the district has no effect on this
10 proceeding.

11 Thank you.

12 ALJ STERN: Thank you.

13 That concludes this proceeding. I'll take
14 the matter under advisement. S-3 is going to be filed
15 probably this week or beginning of next week?

16 MS. WOLFE: By Tuesday?

17 ALJ STERN: That would be fine. And then the
18 document relating to legal descriptions of the various
19 parcels. And I think that's about it.

20 Anything else?

21 MR. SHAPIRO: No, Your Honor. Thank you.

22 MR. CAMPBELL: No.

23 ALJ STERN: Thank you. That concludes this
24 hearing.

25 (The hearing concluded at 3:45 p.m.)

EXHIBIT B

1 take on development of vacant lands?

2 A. Right.

3 MS. WOLFE: I have no further questions, Your
4 Honor.

5

6

EXAMINATION

7

8 Q. (BY ALJ STERN) My only question to you is
9 this area of Arizona Farms, how many acres is that?

10 A. It's --

11 Q. Total, the two pieces.

12 A. 2,850 acres. That's Arizona Farms. Ware
13 Farms is 480 acres. It's roughly 500 acres and 2800
14 acres, Ware Farms being 500 roughly.

15 Q. Ware Farms is only 500 acres?

16 A. Parcel 17 is Ware Farms, 480 acres. This 160
17 is not part of it, that we own, anyway.

18 Q. You're saying Arizona Farms is how many acres
19 total?

20 A. 2,850.

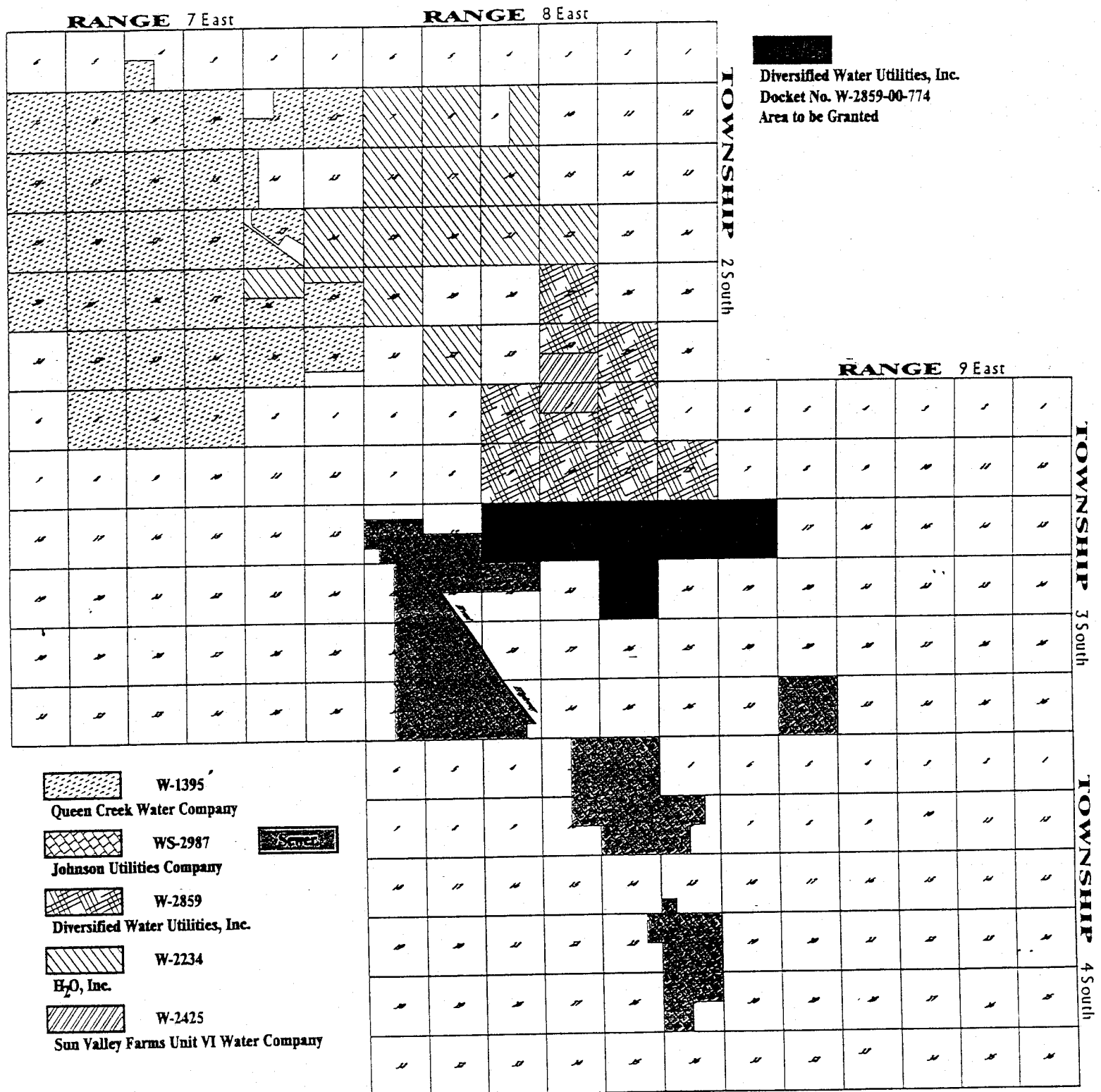
21 Q. It's just undeveloped desert at this point,
22 isn't it, those two parcels?.

23 A. Yes. Actually, I'm not sure if it's being
24 farmed or if it's desert right now.

25 Q. What is in between them, that purple area?

EXHIBIT C

DIVERSIFIED WATER UTILITIES, INC. EXTENSION AREA TO BE GRANTED



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**PROOF OF SERVICE AND
CERTIFICATE OF MAILING**

I hereby certify that on this 22nd day of May, 2001, I caused the foregoing document to be served on the Arizona Corporation Commission by hand-delivering the original and ten (10) copies of said document to:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

With copies of the foregoing mailed/hand-delivered this 22nd day of May, 2001 to:

Marc Stern, Administrative Law Judge
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Teena Wolfe, Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Deborah R. Scott
Utilities Division Director
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Thomas H. Campbell
Gregory Y. Harris
Lewis & Roca
40 N. Central Avenue
Phoenix, Arizona 85004
Attorneys for Johnson Utilities Company

Petra Schadeberg
Pantano Development Limited Partnership
3408 North 60th Street
Phoenix, Arizona 85018-6702
Intervenor

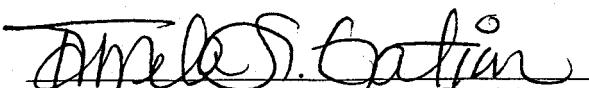
Jay Shapiro
Norman D. James
Karen E. Errant
Fennemore Craig
3003 N. Central Ave., Suite 2600
Phoenix, Arizona 85012-2913
Attorneys for H2O, Inc.

Charles A. Bischoff
Jorden & Bischoff
7272 East Indian School Road, Suite 205
Scottsdale, Arizona 85251
Attorneys for Queen Creek Water

Richard N. Morrison
Salmon, Lewis & Weldon, P.L.C.
4444 North 32nd Street, Suite 200
Phoenix, Arizona 85018
Attorneys for LeSuer Investments, et al.

Kathy Aleman, Manager
Wolfcor, LLC & Wolfkin Farms
Southwest Properties, Inc.
3850 East Baseline Road, Suite 123
Mesa, Arizona 85206
Intervenor

Dick Maes, Project Manager
Vistoso Partners, LLC
1121 West Warner Road Suite 109
Tempe, Arizona 85284
Intervenor


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